

General Information: A charitable remainder unitrust that has no Illinois income tax liability and that is not required to file a federal income tax return has no duty to file an Illinois income tax return.

May 4, 1999

Dear:

This is in response to your letter dated April 12, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding upon the Department. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I am preparing federal forms 5227 (Split Interest Trust Information Return) and 1041A (Trust Accumulation of Charitable Amounts) for a charitable remainder unitrust which came into existence during 1998. A charitable remainder unitrust is exempt from federal taxation, thus the above forms being filed are "Informational" returns. The trust is not required to file federal form 1041.

The trust was organized in Florida. The trustee who manages the investments for the trust is an Illinois resident. The 5% annuity beneficiary is a Florida resident. The unitrust is required to pay a 5% annuity to one individual. If income exceeds the amount of the annuity, the excess is added to the principal of the trust. The entire principal of the trust will be distributed to the designated charity upon the death of the annuity recipient. The trust does not have any filing requirements in the state of Florida.

Illinois does not have any form comparable to the federal form 5227. I spoke with an individual at the taxpayer assistance section of the Illinois Dept of Revenue, who advised me that there is not a filing requirement for this trust in Illinois, since the Trust is exempt from tax and is not required to file federal form 1041. However, this individual had never heard of federal form 5227, was not experienced with charitable remainder trusts, and said that the federal forms book that they refer to in her Dept. does not include any reference to federal form 5227, so she wasn't 100% sure that Illinois did not have any filing requirement. She suggested that I run the question through your legal department.

#### **RULING**

Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 et seq.) section 502(a) sets forth the general requirements regarding returns and notices. The section states in pertinent part:

A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year: (1) [f]or which such person is liable for a tax imposed by this Act, or (2) [i]n the case of a resident ... for which

such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

As the quoted provisions indicate, a return must be filed where either of two circumstances applies. First, a return is required where there exists a liability for tax imposed by the IITA. Second, if the taxpayer is a resident required to file a federal income tax return, then an Illinois return must be filed regardless of whether there is liability under the Act. IITA section 1501(a)(20) defines the term "resident" to include both a trust created by will of a decedent domiciled in Illinois at the time of death and an irrevocable trust where the grantor thereof was domiciled in Illinois at the time the trust became irrevocable.

IITA section 203(c) provides that the Illinois base income of a trust shall be its "taxable income" as modified by certain addition and subtraction provisions. IITA section 203(e) states that the term "taxable income" means "the amount ... of taxable income properly reportable for federal income tax purposes."

Internal Revenue Code section 664(c) exempts from federal income tax a charitable remainder unitrust (CRUT) without unrelated business taxable income. Likewise, the trust is exempt from filing a federal income tax return (See Rev. Proc. 83-32, 1983-19 I.R.B. 34). Instead, a CRUT must file only certain information returns (See Treas. Reg. §1.6034-1).

The federal tax treatment of an exempt CRUT means that the trust does not have "taxable income reportable for federal income tax purposes" under IITA section 203(e). Neither, then, will it have an addition or subtraction modification under IITA section 203(c). Accordingly, an exempt CRUT has no Illinois base income and is thus not liable for Illinois income tax under IITA section 502(a). Therefore, unless the trust is a resident required to file a federal income tax return, it need not file an Illinois return. However, as previously noted an exempt CRUT, while required to file certain information returns, need not file a federal income tax return. For this reason, regardless of its residency status an exempt CRUT is not required to file a return in Illinois (See IT-95-0013).

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items one through eight of 86 Ill. Adm. Code 1200.110(b).

Sincerely,

Brian L. Stocker  
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